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CHARLES ELMORE

In the Supreme Court of the United States

OCTOBER TERM, 1929.

No. 238.

STATE OF OHIO, EX REL. PAULINE WADSWORTH,
Appellant,

vs.

JOHN A. ZANGERLE, AUDITOR OF CUYAHOGA COUNTY, BOARD OF PARK COMMISSIONERS OF THE METROPOLITAN PARK DISTRICT, IN CLEVELAND, ET AL.,
Appellees.

Appeal from the Supreme Court of the State of Ohio.

PETITION FOR REHEARING AND SUPPORTING BRIEF.

GEORGE D. HILE,
Attorney for Appellant.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, O.

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Appellant petitions this Honorable Court for a rehearing of this cause due to grave errors having been committed which a rehearing should avert in this, to wit:

First: That this Court by affirming the judgment of the Supreme Court of Ohio, holding that persons who are not elected can be clothed by the General Assembly with the sovereign legislative power to levy taxes, and that state legislation that does this neither violates the Federal Constitution or any of its provisions, nor the fundamental law of the State or Nation.

Second: That this Court affirms a judgment of the Supreme Court of Ohio, which repudiates a principle of republican form of government which requires taxes to be levied by the people's representatives and that state legislation that destroys this principle of republican government does not violate the Federal Constitution or any of its provisions, although it guarantees that principle of government to the people and the constitution of Ohio assures it to them in these words:

> "This enumeration of rights shall not be construed to impair or deny others retained by the people: and all powers not herein delegated remain with the people." (Sec. 20 Art. 1, Ohio Constitution.)

Third: This Court holds that the provision in the Ohio Constitution, Sec. 2, Art. IV, which gives the State Supreme Court jurisdiction to consider constitutional questions but denies the majority of the members constituting the Court the right to declare a statute unconstitutional when the Court of Appeals has held it valid, does not violate the Federal Constitution, even though fundamental or natural rights are violated by the act.

BRIEF SUPPORTING ABOVE CONTENTIONS.

The Court to support its holding on the question of who can levy taxes cites *Houck vs. Little River Drainage District,* 239 U. S. 254; *Orr vs. Allen,* 245 Fed. 486, 248 U. S. 35, and *Solich vs. Heskin,* 222 U. S. 522. The first came to this Court from Missouri where the legislation complained of had been sustained but the act there assailed required the officers who were given the power to levy taxes for the district to be elected. The case in 222 U. S. 522, came to this Court from North Dakota, where the State Supreme Court, held that persons who were not elected could not levy taxes, but that persons could be appointed to levy special assessments. This judgment of North Dakota Court was affirmed

by this Court on both points, while in the case at bar the ruling is that appointees can levy taxes, and is inconsistent with that in 222 U. S. 522. In *Orr vs. Allen, supra,* assessments and not taxes was the question. The power of taxation is legislative. "This power belongs, in this country, to the legislative sovereignty, State or National." *Merwither vs. Garrett,* 102 U. S. 472, page 519. This is the law in Ohio and always has been. *State vs. Toledo,* 48 O. S. 112.

The Court's attention is called to the fact that in *Board of Tuberculosis Hospital District vs. Peters,* 253 Mo. 520, and N. D. Court, in *Vallalley vs. Grand Forks Park Commissioners,* 15 L. R. A. 61, each held appointees could not exercise the power of taxation. In *Bank vs. Commissioners of Wyandott County,* 61 Fed. 486, which United States Circuit Court affirmed, the court holds the same way. In *Michigan Central Ry. Co. vs. Powers,* 201 U. S. 245, the court clearly announces that a delegation of the taxing power to appointees would violate the Federal Constitution. When the right to representation ends, arbitrary rule begins.

Natural or inalienable rights are not created by a constitution or law. Abolish constitutions and laws and they will persist to endure. Upon them governments are erected in this country.

The provision in the Ohio Constitution that gives jurisdiction to the Supreme Court when constitutional questions are involved, but denies the majority of the members to hold an act unconstitutional which has been held constitutional by a Court of Appeals either denies due process on the equal protection of the law, for the decision is that of one judge. The appellant in the State Supreme Court by the consideration of five judges won a moral victory, but this provision which does not think nor reason, deprived appellant of a legal victory regardless of the fact fundamental rights are involved which this Court holds is a matter

which belongs wholly to the state to correct. Fundamental rights seldom fail to eventually prevail. This Court has stated that the rights are protected by the Federal Constitution. There are many cases in history that show this fundamental right was asserted by Dred Scott. This Court held it had no jurisdiction but it disposed of his claim upon the merits denying his claim and a civil war was required to reverse that judgment.

The fact that this Court has affirmed the judgment of the state court, instead of dismissing for want of jurisdiction will enable the claim being made that this Court holds that taxation by appointees is legal. A rehearing is therefore asked in behalf of equity and justice.

GEORGE D. HILE,
Attorney for Appellant.

STATE OF OHIO,
CUYAHOGA COUNTY, ss.

I, the undersigned, one of counsel in the case above, do hereby certify that this petition for a rehearing is filed in good faith and not for delay.

GEORGE D. HILE.

Sworn to before me and subscribed in my presence by George D. Hile, this 5th day of April, 1930.

H. R. SNYDER,
Notary Public.